BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I

Opinions of the Court Below

The opinion of the Supreme Court of Illinois (R. 62-66), March 21, 1945, is not yet officially reported. (— Ill. —, — N. E. (2d) —). Its former opinion (R. 52-59), vacated by allowance of rehearing, is not reported.

II

Jurisdiction

The date of the judgment of the Illinois Supreme Court to be reviewed is March 21, 1945. The jurisdiction of the court is invoked under § 237(b) of the Judicial Code as amended, §§ 3 and 4, Title 28, U. S. C. A., p. 206, and appears from the jurisdictional statements in the petition for certiorari.

III

Statement of the Case

The summary statement in the petition is hereby adopted as a part of this brief.

IV

Specification of Errors

1. The Supreme Court of Illinois erred in said cause in affirming the judgment appealed from, inasmuch as the latter was entered without jurisdiction and deprived the said Grace B. Martin and Celia King, and each of them, of their property without due process of law, in violation of § 1 of Article XIV of the Amendments to the Constitution of the United States.

2. The Supreme Court of Illinois erred in said cause in affirming the judgment appealed from by depriving the said Grace B. Martin and Celia King, and each of them, of their property without due process of law, in violation of § 1 of Article XIV of the Constitution of the United States, inasmuch as said judgment was entered without jurisdiction.

ARGUMENT

Believing the foregoing petition to be sufficient in itself for the most part to present petitioners' case, we will not add to that any comprehensive argument, but argument here will consist mainly of comment on the cases cited in the opinion sought to be reviewed, so far as said cases have not already been sufficiently discussed in our petition. Questions on the merits have been discussed therein and will be here only for the purpose of showing that there is no tenable nonfederal ground for the decision of the Illinois Supreme Court broad enough to sustain the decision of that court.

Cases Cited in the State Court Opinions

Cited on the proposition that because attachment is a special statutory proceeding, the affidavit for the writ must meet all essential requirements to give the court jurisdiction of the subject-matter, are several cases that do not sustain the conclusion that such jurisdiction was lacking in the instant case. Two of these cases, *Pullian* v. *Nelson*, 28 Ill. 112, and *Eddy* v. *Brady*, 16 Ill. 306, are not relevant in the slightest degree.

In *Thormeyer* v. *Sisson*, 83 Ill. 188, jurisdiction was lacking because, as pointed out in the last sentence of the opinion, the judgment there involved contained no finding of the jurisdictional fact of mailing notice and there was no other showing thereof.

In *Morris* v. *Hogle,* 37 Ill. 150, the notice was to the wrong term and the parties admitted there was no other notice, and the case holds that defects in the form of the notice (not naming the parties) are not jurisdictional.

Rabbitt v. *Weber,* 297 Ill. 491, may be distinguished from the instant case on several grounds. The affidavit there contained no statement whatever concerning residence, and for that reason was held not to give jurisdiction when sought to be relied on by the claimant, who was the attorney for the plaintiff in the attachment suit, and therefore a party to the record, and that attorney made the affidavit himself and was not a stranger to the record, purchasing in reliance on the judgment, and there was no finding in the attachment judgment of jurisdiction duly acquired. For that reason, jurisdiction was held to be lacking, although the court recognizes (p. 497) that if an affidavit contains the substantial elements of the statute and is merely defective it is amendable and the court is not without jurisdiction.

The Illinois Supreme Court was under a misapprehension with respect to the effect of a finding of jurisdiction in the judgment in special statutory proceedings and the distinction between void and merely voidable defects in such proceedings on collateral attack. At the present time, a very large portion of our court proceedings are statutory and, especially when that statutory jurisdiction is exercised according to the usual common law or chancery practice, the principles governing jurisdictional questions and collateral attack are the same in all cases. (*Drainage Dist.* v. *Highway Commrs.,* 238 Ill. 521, 524; *Vil.* v. *Homesteaders' Assn.,* 367 Ill. 508, 512; *People* v. *Ward,* 272 Ill. 65, 68; *Stack* v. *People,* 217 Ill. 220, 234; *Moore* v. *Neil,* 39 Ill. 256; *Hereford* v. *People,* 197 Ill. 222, 229; *Pierce* v. *Carleton,* 12 Ill. 358, 363-4; *Pine T. L. Co.* v. *C. S. & G.*

Exch., 238 Ill. 449, 455; *Vyverberg* v. *Vyverberg*, 310 Ill. 599, 604.)

The Illinois rule shown by the cases just cited does not differ from the federal rule.

> "The jurisdiction which is now exercised by the common law courts in this country, is, in a very large proportion, dependent upon special statutes conferring it. Many of these statutes create for the first time, the rights which the court is called upon to enforce, and many of them prescribe with minuteness the mode in which those rights are to be pursued in the courts. Many of the powers thus granted to the court are not only at variance with the common law, but even in derogation of that law.
>
> "In all cases where the new powers, thus conferred, are to be brought into action in the usual form of common law or chancery proceedings, we apprehend there can be little doubt that the same presumptions as to the jurisdiction of the court and the conclusiveness of its action will be made, as in cases falling more strictly within the usual powers of the court."
>
> *Harvey* v. *Tyler*, 69 U. S. 328, 342.

Indeed, in an action *in rem* in attachment, it is the levy which gives the court jurisdiction and defects in the affidavit, publication, or otherwise, do not defeat the jurisdiction, even though they constitute reversible error on appeal. (*Cooper* v. *Reynolds*, 77 U. S. 308, 319-21.)

While the opinion in the instant suit cites cases from other states against the validity of an affidavit stating grounds of attachment in the alternative, yet there are many decisions in other state courts *contra*. (*Haynes* v. *Powell*, 69 Tenn. 347, 352; *Van Alstyne* v. *Erwine*, 11 N. Y. 331; *Hardy* v. *Trabue*, 67 Ky. 644, 649-50; *Wood* v. *Wells*, 65 Ky. 197, 199.)

Conclusion

The judgment of which we seek a review is of such far-reaching effect that we believe the public interests would be promoted by such a review and a decision by this Court. Many innocent purchasers in Illinois and throughout the country have made their purchases in reliance upon judicial proceedings and the rule everywhere existing which the Illinois Supreme Court has disregarded in the instant suit. If those rules are to prevail no longer nobody will be safe in purchasing hereafter relying upon judicial proceedings, and in the chaos thus resulting court decisions will be meaningless. Moreover, nobody who obtains or has obtained a judgment will be secure. While the judgment itself and the findings thereof will always be preserved of record, yet if those findings mean nothing, the judgment creditor must always run the risk of loss or destruction of some jurisdictional paper from the file. Such a state of affairs ought not to be allowed to exist.

Respectfully submitted,

EDWARD H. S. MARTIN,
Attorney for Petitioners.